

Chapter 3

A Summary of Laws Controlling Nonpoint Pollution in Washington State

Since the 1970s, environmental law has emphasized regulating municipal and industrial facilities. Permits issued under the National Pollutant Discharge Elimination System (33 USC 1342) were intended to protect water from contamination. Issuing these permits and monitoring compliance with them are still an integral part of maintaining water quality. However, according to recent studies, less than one-third of all polluted waters in the state result from municipal or industrial discharges. Most water pollution doesn't come out of a pipe these days. It can be traced to everyone's day-to-day activities.

Generally, nonpoint source pollution is divided into six categories:

- Agriculture, including crop and animal feeding operations
- Forestry
- Urban pollution, including roads, on-site sewage systems, development, construction and pollution prevention
- Recreation (including marinas and boats)
- Hydromodification, and
- Loss of aquatic ecosystems.

In 1987, Congress amended the Clean Water Act to include section 319 (33 USC 1329), which requires all states to develop and implement programs to manage nonpoint pollution. Grants are awarded to states to execute nonpoint plans that have been approved by the federal Environmental Protection Agency (EPA). The state legislature designated Ecology as the lead for developing plans and programs required by the federal Clean Water Act (see RCW 90.48.260). In 1988, EPA approved Ecology's first nonpoint pollution plan. As part of the federal Clean Water Action Plan, EPA is now requiring states to update their nonpoint programs to maintain eligibility for these section 319 grants, as well as additional monies through the Clean Water Action Plan. This document is part of the required update.

In 1990, Congress required the development of nonpoint strategies for coastal areas through the Coastal Zone Act Reauthorization Amendments (CZARA). In section 6217 of this act (16 USC 1455b), states are to implement programs to include specific actions designated by EPA and the National Oceanic and Atmospheric Administration (NOAA) in their nonpoint programs. EPA and NOAA issued a list of 56 "Management Measures" for inclusion in State programs. States are also required to identify and implement additional programs, as needed, to ensure that all waters meet the State's water quality standards.

Ecology submitted its CZARA draft in September, 1995, and a revised draft in June, 1996. In June, 1998, Ecology received conditional approval on its CZARA submission.

The approval and its conditions are included as Appendix B of this document. This nonpoint plan is also intended to meet the requirements under section 6217 of CZARA.

Federal Laws Governing Nonpoint Pollution

Washington State has been delegated or otherwise authorized to implement the following federal statutes:

The Clean Air Act (42 USC 7401 et seq) is implemented through the Clean Air Washington Act (chapter 70.94 RCW), which prevents and regulates air pollution and its sources. Air pollution can lead to atmospheric deposition of pollutants in the State's waters.

The Clean Water Act (33 USC 1251 et seq) is mostly implemented through the State's Water Pollution Control Act (chapter 90.48 RCW). Some of the efforts derived from the Clean Water Act appear in the table below.

Table 3.1
State Activities Implementing the Clean Water Act

Activity	Reference in the Clean Water Act	Reference in State Statute (RCW)
Clean Vessel Act	33 USC 1252	Chapter 88.12 RCW
Discharge permits	subchapter 2: NPDES	RCW 90.48
List of impaired waters & TMDLs*	section 303	None
Lakes	section 314**	
Nonpoint Pollution	section 319	
National Estuaries	section 320	for Puget Sound: Chapter 90.71 RCW
Water Quality Certifications	section 401	
State Revolving Fund		Chapter 70.146 RCW

*TMDLs are Total Maximum Daily Loads and are also referred to as Water Cleanup Plans.

** Section 314 is no longer funded.

The Coastal Zone Management Act (16 USC 1451 et seq) is implemented through the State's Shoreline Management Act (chapter 90.58 RCW), which is described in the next section.

The Federal Insecticide, Fungicide and Rodenticide Act (7 USC 136 et seq) is implemented by the State's Pesticide Control Act (chapter 15.58 RCW). This law requires that all pesticides that are used commercially must be registered with the EPA.

The Marine Plastic Pollution Research and Control Act (33 USC 1901 et seq) is implemented for recreational boaters through the State's law for Marine Plastic Debris (chapter 79.81 RCW). The Coast Guard implements this law for commercial vessels.

The Solid Waste Disposal Act (42 USC 6901 et seq) is implemented through a variety of State laws regarding human health, including chapters 70.93, 70.95 et seq, 70.102, and 70.105 RCW et seq. A more detailed analysis of these laws is provided in the section on Pollution Prevention in the urban management measures.

The Toxic Substance Control Act (15 USC 2601 et seq) is implemented directly by the State Department of Health and local health departments. Current programs include lead abatement, poison control, and environmental assessments. Asbestos removal is implemented by local air authorities, and pesticides are regulated by the Department of Agriculture.

State Laws Governing Nonpoint Source Pollution

Managing Nonpoint Pollution through Land Management

The first priority in managing any pollution source is prevention. One of the most effective ways to prevent nonpoint pollution is to manage upland uses and activities.

Three key laws provide the basis for land management in Washington: the State Environmental Policy Act (SEPA: Chapter 43.21C RCW), the Shoreline Management Act (SMA: Chapter 90.58 RCW), and the Growth Management Act (GMA: Chapter 36.70A RCW). Local governments are key to the implementation of these acts: land use and zoning are primarily their responsibility. Some direct actions can be taken by the State under SEPA, and local government actions under all these laws can be appealed by the State or the general public.

State Environmental Policy Act (SEPA): SEPA may be the most powerful legal tool for protecting the environment in the State. SEPA review is required for all projects which need a permit or approval from a State or local government entity, unless they fall into categories specifically exempted in the SEPA rules. Activities undertaken by a government agency, such as rule and plan development, may also require SEPA review. Proposals that typically require SEPA review are found in Table 2. Some proposals are categorically exempt because the size or type of the activity is unlikely to cause a significant adverse impact. Examples of exempt projects are the construction of a single family dwelling, minor road repair and maintenance, and the issuance of a business license.

SEPA review is initiated when the applicant fills out the SEPA environmental checklist and submits it to the lead agency, usually in conjunction with a permit application (listed in Table 2). The checklist asks specific questions regarding the proposal, such as the amount of earth to be moved and the expected noise level. Specifications regarding

prevention or minimization of both immediate and long-term impacts, such as erosion control plans or noise reduction measures, are also requested in the checklist.

If the environmental effects of the proposal would be significant even after mitigation, the applicant or lead agency prepares a draft environmental impact statement (EIS). The draft EIS describes the impacts of the project on the environment and describes potential mitigation measures for each impact. After public review and comment, the lead agency then prepares a final EIS that responds to all comments on the draft.

The mitigation measures identified in SEPA become conditions on which the permit or approval is issued. Failure to complete them becomes a violation of the permit, subject to enforcement. Permittees should note, the mitigation measures must be listed as conditions on the permit or the permit applications must be altered to contain the needed changes for the mitigation conditions to be enforceable. Identification in the SEPA document alone is NOT sufficient.

Table 3.2
Typical Activities Requiring Review Under
the State Environmental Policy Act

Project Types	Permit or Approval Required	Lead Agency(s)
Building projects	Building and occupancy permits	Cities and Counties
In-stream alteration of waterways	Hydraulic Permit	Fish and Wildlife
Industrial discharge to water	NPDES or state waste discharge permit	Ecology
Examples of Government Actions requiring SEPA		Lead Agency(s)
Promulgation of rules		All governments
Adoption of a local plan (comprehensive plan, solid waste, wastewater, etc)		Local governments
Road construction or other public works		WSDOT, cities and counties

If the lead agency feels that the adverse environmental impacts of the project cannot be mitigated, it can deny the permit or approval. SEPA states:

"The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of state government, including state agencies, municipal and public corporations, and counties. Any government action may be conditioned or denied pursuant to this chapter..." (RCW 43.21C.060)

Thus, under SEPA, a project can be denied a permit, based solely on environmental impacts, within the limitations described in SEPA. This was reaffirmed in *Polygon Corp v. City of Seattle (1978)*. In *Department of Natural Resources v. Thurston County (1979)*, the courts further ruled that a project permit could be denied by SEPA even if it met other

statutory requirements, in this case, the Shoreline Management Act (chapter 90.58 RCW).

Any organization, governmental or private, or individual citizen can challenge a SEPA determination. Challenges must first be made to the legislative body governing the lead jurisdiction (for example, city council, county commissioners, or the governing commission of a state agency) if that agency has an adopted SEPA appeal process. Further appeal can be pursued in district or superior court and in the State Supreme Court.

In summary, the State Environmental Policy Act (Chapter 43.21A) is used on a proposal-by-proposal basis to eliminate or reduce each project's environmental impacts.

Shoreline Management Act: Many coastal, wetland and riparian areas can be managed under the State's Shoreline Management Act (SMA: chapter 90.58 RCW). In the act, a shoreline is defined as:

- a. all marine waters,
- b. streams with a mean annual flow greater than 20 cubic feet per second, and
- c. lakes with an area greater than 20 acres.

Associated wetlands, river deltas, and some or all of the 100-year floodplain may also be considered shorelines. Upland areas within 200 feet of any shoreline are defined as "shorelands." Both shorelines and shorelands are subject to the SMA.

In the SMA, local governments prepare what is termed a "Shoreline Master Program" which is both a planning and a regulatory tool. As a plan, it designates the allowed uses for the shorelines and how these uses may change over time. As regulation, local governments issue permits for all development of shorelines within the state under their respective master programs. Uses inconsistent with the master program are not allowed. An example of the use of a shoreline master program action would be to identify areas of low tidal flushing and to then disallow marinas as a use in those areas.

The SMA also requires Ecology to prepare guidelines for the development of local shoreline master programs and a State master program. To be valid, a local shoreline master program must be approved by Ecology. To gain approval, the local program must be consistent with the SMA, the guidelines, and the State master program.

Shoreline master programs must be developed with involvement of the public. Generally, this is done with a citizens' advisory committee as well as public hearings and comment periods. Both the adoption and approval of a master program can be appealed by any agency, organization, or citizen. These appeals go before the Growth Hearing Boards, which also hear appeals on the adoption of local comprehensive plans prepared under the State's Growth Management Act, discussed below. Permits issued under a shoreline master program may be appealed to the Shorelines Hearings Boards. All

appeals may be pursued from their respective board to the District, Superior and Supreme Courts of the State, as necessary.

If a jurisdiction does not have an Ecology-approved shoreline master program, Ecology may impose a virtual moratorium on substantial development by denying all permits for shoreline development, and appealing any issued by the local jurisdiction. And, although Ecology has never needed to use this authority, it may opt to develop a master program for a local jurisdiction and impose the plan on that jurisdiction. Currently, however, all jurisdictions which are required to have a master program either have one or have a “substantial equivalent” allowed by law.

In summary, the Shoreline Management Act can be used to implement many of the management measures related to shoreline development, marinas, wetlands, and riparian areas.

Growth Management Act: The GMA is the newest of these laws, passed in 1990 as a way to combat urban sprawl in the State. GMA required certain counties and the cities therein to update their comprehensive plans. Counties required to implement GMA had:

- a population greater than 50,000, which was an increase over the previous 10 years of:
 - 10 percent or more, if determined prior to May 16, 1995,
 - 17 percent or more, if determined on or after May 16, 1995; or
- a population increase of 20 percent or more over the previous 10 years, regardless of population.

In the remaining counties, a majority vote of the county commissioners triggers the requirement that the county, as well as the cities within the county, plan according to GMA.

In the early days of the act, implementation focused on a very narrow group of counties. The original intent of the act was to require “planning by selected counties and cities,” presumably those with the most rapid growth. Only 12 of the state’s 39 counties met the threshold for growth when it passed. Of these 12 counties, nine were in Puget Sound. Clark County, a part of Metropolitan Portland, Oregon, also met the threshold along with only two counties in eastern Washington, Chelan and Yakima.

Through the Department of Community, Trade and Economic Development, grants were available for counties and cities planning under GMA. Approximately \$50 million has gone to local governments to help them meet the requirements of the act and for special projects related to GMA. Ten counties have “opted in.”

Growth in Washington has accelerated since 1990. In that year, the state had only grown 17.8 percent since 1980. By comparison, since 1995, the 10-year growth rate has hovered at 23 - 24 percent. As growth accelerated, more areas of the state met the threshold for planning under GMA. Currently, the number of counties under GMA has

more than doubled. Twenty-nine of the thirty-nine counties containing some 5.4 million people (about 95 percent of the State's population) are planning under the Growth Management Act.

According to GMA, all counties and cities in the state have some planning requirements. All Washington cities and counties are required to:

- designate and protect critical areas and resource lands,
- have development regulations consistent with their comprehensive plans,
- approve subdivisions and short plats only if written findings are available, or if adequate provisions are made for public health, safety and welfare, and
- ensure an adequate water supply for any building permit application.

Counties and cities fully planning under GMA must also develop comprehensive plans according to the goals and requirements within four years of the date they were required to, or chose to, plan. They are also required to have development regulations that are consistent with their comprehensive plans by the same deadline. They can request a six-month extension of this deadline.

Table 3.3
Washington's Counties: Comparative Growth Rates and
Participation in the Growth Management Act (chapter 36.70A RCW)

County	1998 Population	Ten-year Growth Rate		GMA Participation (year)	
		1981-1991	1988-1998	required	opted in
Adams	15,900	5.34	13.57		
Asotin	20,000	4.71	14.94		
Benton	137,500	1.23	32.08		1990
Chelan	62,600	15.15	25.96	1990	
Clallam	66,700	11.43	22.61	1990	
Clark	328,000	27.83	52.91	1990	
Columbia	4,200	0.00	2.44		1991
Cowlitz	93,100	3.73	15.65		
Douglas	31,400	20.61	30.29		1990
Ferry	7,300	8.33	19.67		1990
Franklin	44,400	5.18	25.07		1990
Garfield	2,400	-4.17	0.00		1991
Grant	69,400	16.13	31.94	1992	
Grays Harbor	67,900	-2.54	7.10		
Island	72,500	38.72	35.77	1990	
Jefferson	26,500	30.12	42.47	1990	
King	1,665,800	17.75	17.82	1990	
Kitsap	229,000	25.32	29.16	1990	
Kittitas	31,400	9.16	25.60		1990
Klickitat	19,100	3.70	15.06		
Lewis	68,600	6.70	19.51	1994	
Lincoln	10,000	-7.29	3.09		
Mason	48,300	25.08	31.25	1990	
Okanogan	38,400	10.03	21.14		
Pacific	21,500	7.87	22.16		1990
Pend Oreille	11,200	4.55	27.27		1990
Pierce	686,800	20.45	25.40	1990	
San Juan	12,600	32.10	31.25	1990	
Skagit	98,700	27.57	39.41	1990	
Skamania	9,900	4.94	23.75		
Snohomish	568,100	36.95	36.73	1990	
Spokane	410,900	5.28	16.04	1994	
Stevens	37,600	6.78	24.50		
Thurston	199,700	30.13	33.76	1990	
Wahkiakum	3,900	-13.15	11.43		
Walla Walla	54,600	2.92	13.04		1990
Whatcom	157,500	20.29	32.24	1990	
Whitman	41,400	-4.70	6.15		
Yakima	210,500	8.86	12.99	1994	
Total State	5,685,300	17.65	24.54	na	na

One of the first steps in implementing GMA is for cities and counties to collaboratively establish countywide planning policies as a framework for developing their new comprehensive plans.

As a minimum, the countywide planning policy must provide for:

- the establishment of the urban growth management area (UGAs) for the county
- contiguous and orderly development, including urban services to newly-developed areas
- the siting of public facilities of a county or statewide nature, including transportation facilities of a statewide nature
- countywide transportation facilities and the development of transportation strategies
- the consideration of affordable housing for all county and city residents
- joint county and city planning within the UGAs
- countywide economic development and employment, and
- an analysis of the fiscal impact.

The UGAs contain the cities, and other areas outside of the cities only if these areas are characterized by urban growth or adjacent to areas characterized by urban growth. The UGAs need to include sufficient land to accommodate the Office of Financial Management's population projection for the next 20-year period. The UGA should permit urban densities and include open space and greenbelts. Under the Growth Management Act (GMA), those local governments fully planning under the Act must adopt a comprehensive land use plan and development regulations that implement the goals of the plan. The GMA provides guidance for local governments in the adopting of goals and policies for the protection of the environment including groundwater protection from point and nonpoint pollution, flooding, and stormwater control, where necessary. The GMA also requires that local governments include the best available science in the designation and protection of critical areas including frequently flooded areas, fish and wildlife conservation areas, and critical aquifer recharge areas. RCW 36.70A.070(1) states that where applicable, local governments must protect ground water, must address drainage, flooding and stormwater, and must guide corrective actions to mitigate or cleanse those discharges that pollute waters of the State, including Puget Sound or waters entering Puget Sound.

The State uses both incentives and enforcement to assure compliance with both the SMA and GMA. Grants are provided to local governments to help implement the acts. SMA grants are provided through Ecology, and GMA grants come from the Department of Community, Trade and Economic Development (CTED). In addition, counties fully planning under GMA and cities are allowed to require "impact fees" from developers to help pay for new facilities -- roads, public parks, open space, recreation facilities, and schools.

Jurisdictions that do not meet GMA deadlines or are found by the Growth Management Hearings Board to be non-compliant with the GMA become ineligible for certain state grant and loan programs, including the Public Works Trust Fund, Community Economic Revitalization Board funds, Centennial Clean Water Fund, or any state grant or loan program that funds capital facilities projects.

In summary, the State can manage land use in a manner consistent with several of the Management Measures, through the coordinated use of SEPA review on projects, SMA's shoreline master program, and regulations under GMA.

Managing Nonpoint Pollution through Incentives and Regulations

Along with the laws managing land use, several laws regarding the environment govern public activities. These provide supplemental authorities to manage nonpoint pollution, including some of the major pieces of environmental legislation in the State. They tend to be more focused on specific sources of nonpoint pollution, and may manage nonpoint pollution in an indirect way. A summary of some of these major laws follows. (Table 3.4)

The Administrative Procedures Act (APA) sets requirements and procedures for all State agencies to follow in decision-making. The APA covers such concepts as the promulgation of rules, the use of regulations, public involvement in agency decision making, and public disclosure.

Upon granting Washington statehood in 1889, the United States ceded ownership of all aquatic lands to the State. Aquatic lands are defined as the tidelands, shorelines owned by the State, and the beds of all navigable waters. Unlike many other states, Washington chose to maintain its aquatic lands in public ownership, leasing lands to private persons when in the best interest of the State. The Aquatic Lands Acts provide the framework for managing the State's aquatic lands by the State Department of Natural Resources (DNR).

These lands are to be managed to maximize public benefit by:

- encouraging direct public use and access
- fostering water-dependent uses
- ensuring environmental protection, and
- utilizing renewable resources.

(RCW 79.90.450).

The acts also form the basis for DNR's Aquatic Lands Strategic Plan. Uses of aquatic lands are controlled through lease contracts. Proceeds are used for improving aquatic lands, including supporting grant funding for marine sewage facilities. The Aquatic Lands Acts comprise seven chapters in the RCW: Chapters 79.90 through 79.96 RCW, inclusive. Each act focuses on a different type or use of aquatic land.

Table 3.4
Washington's Laws Governing Nonpoint Pollution

Statutory Title of Chapter (if no title, subject in italics)	Chapter in RCW	Chapters in WAC of Regulations
Administrative Procedures Act	34.05	
Aquatic Lands--In General	79.90	
Aquatic Lands--Easements and Rights of Way	79.91	
Aquatic Lands--Harbor Areas	79.92	
Aquatic Lands--Waterways and Streets	79.93	
Aquatic Lands--Tidelands and Shorelands	79.94	
Aquatic Lands--Beds of Navigable Waters	79.95	
Aquatic Lands--Oysters, Geoducks, Shellfish and Other Aquacultural Uses	79.96	
<i>Center for Sustaining Agriculture and Natural Resources</i>	15.92	
Clean Air Washington Act	70.94	
Conservation Districts Law	89.08	
<i>Construction Projects in State Waters</i> "Hydraulic Code"	75.20	220.110
Dairy Nutrient Management Act	90.64	none
<i>Department of Ecology</i>	43.21A	none
Environmental and Forest Restoration Act	43.21J	none
Forest Practices Act	76.09	173-202, 222-24, 222- 30, 222-34, 222-38
Growth Management Act	36.70A	
<i>Hazardous Substance Information</i>	70.102	none
Hazardous Waste Management Act	70.105	173-303
Highway Related Storm Water Control	90.78	
<i>Integrated Pest Management</i>	17.15	
Marine Plastic Debris	79.81	
Model Toxics Control Act	70.105D	173-340
Oil and Hazardous Substance Spill Prevention and Response Act	90.56	
<i>On-site Sewage Disposal</i>	70.118	246-272
Pesticide Application Act	17.15	
Pesticide Control Act	15.58	16.228
<i>Phosphorus in Detergents</i>	70.95L	none
Public Lands Act	79.01	
Puget Sound Water Quality Protection	90.71	400-12
<i>Reforestation</i>	76.12	
Regulation of Recreational Vessels	88.12	
Sales and Leases of Public Lands and Materials	79.12	
<i>Salmon Enhancement Program</i>	75.50	
Salmon Recovery Act	75.46	

Shoreline Management Act	90.58	173-16, 173-26*
Solid Waste Management--Reduction and Recycling Act	70.95	
State Environmental Policy Act	43.21A	197-11
Stewardship of Nonindustrial Forests and Woodlands	76.13	
Used Oil Recycling Act	70.95I	
Waste Reduction, Recycling, and Model Litter Control Act	70.93	
Water Pollution Control Act	90.48	
Watershed Planning Act	90.82	
Worker and Community Right to Know	49.70	296-62

*Proposed

Aquatic Lands-- In General: Provides the definitions and general guidance for the basic framework to manage aquatic lands. Sets the basis for aquatic lands as maximizing the public benefit.

- Aquatic Lands--Easements and Rights of Way: Governs the use of aquatic lands in the construction of bridges and other crossings of waterways such as sewer and water lines. Permits are required to obtain these rights of way. In addition, all bridges and similar structures must receive a permit from DNR before construction.
- Aquatic Lands--Harbor Areas: Governs the designation and uses of harbor areas. Designates terms for leases for construction of docks, wharves and other improvements related to commerce.
- Aquatic Lands--Waterways and Streets: Governs the use, conversion or modification of waterways, and specifically sets the conditions to convert a waterway to a street within urban areas. Requires a permit for conversions. Limits conversion to 100 feet per street.
- Aquatic Lands--Tidelands and Shorelands: Governs the use of tidelands, allows for the platting of tidelands at the discretion of DNR. Authorizes the sale or lease of tidelands. Limits sale of tidelands to public corporations, such as municipalities. Specifies terms for conveyance of tidelands to the United States for a naval base.
- Aquatic Lands--Beds of Navigable Waters: Governs the use of all beds of navigable waters. Requires permit from the federal Corps of Engineers. DNR may also review specifications for improvements. Sets lease forfeiture if lands are not used for two years.
- Aquatic Lands--Oysters, Geoducks, Shellfish and Other Aquacultural Uses: Governs the lease of tidelands for shellfish harvest. Requires inspection and certification by

the Department of Fish and Wildlife before leasing. Establishes triple damages for unlawful take of shellfish.

The Center for Sustaining Agriculture and Natural Resources set up three programs to encourage integrated pest management. The focus of these programs is research for newer, more innovative methods of pest management. As research programs, all are associated with Washington State University. These programs are:

- The Center for Sustainable Agriculture
- The Food and Environmental Quality Laboratory
- The Commission on Pesticide Registration

The Clean Air Washington Act provides the framework for controlling air pollution in the state. The Act:

- Authorizes Ecology to seek delegation for implementing the federal Clean Air Act
- Provides for the promulgation of rules to limit emissions;
- Authorizes the establishment of local clean air authorities, which may issue rules more stringent than Ecology's;
- Prohibits the open burning of certain materials, including petroleum products, rubber products, plastics, paper, cardboard, dead animals, and construction debris;
- Prohibits open burning in urban areas, limits open burning in other areas according to season and/or weather conditions; and
- Requires permits for combustion facilities such as solid waste incinerators and industrial plants.

Air emissions regulated under this act are the major source of atmospheric deposition, an identified cause of nonpoint pollution.

The Conservation Districts Law establishes both the state Conservation Commission and local conservation districts. Conservation districts are organized to provide research, technical assistance, and financial assistance to landowners in the conservation of the renewable natural resources of the State, including water and soil. As part of their efforts in soil conservation, the districts are to encourage the reduction in the volume of runoff.

Chapter 75.20 RCW governs Construction Projects in State Waters. It is commonly called the "Hydraulic Code." This act requires a permit from the Department of Fish and Wildlife to build any structure in State waters. These structures may be anything from wharves for commercial use to shoreline stabilization and concrete bulkheads for single family dwellings. This law also establishes a Hydraulic Appeals Board for permits that are denied and limits permit denial to those cases where the construction would harm fish stocks.

The Department of Ecology is established in Chapter 43.21C. Ecology was created in 1973 by combining the Department of Water Resources, the Water Pollution Control Commission, and the Air Pollution Control Board. Ecology was also delegated the Solid Waste Management Program. Subsequently, Shorelands, Hazardous Waste, and Toxics Cleanup were added as the enabling legislation passed for each. Ecology is authorized to

promulgate rules, issue grants and provide technical assistance. Specific reference is made to grants to control noxious aquatic weeds such as milfoil, purple loosestrife, and hydrilla. Ecology is required to prepare and adopt a development plan for the State, including managing urban and agricultural pollution sources. Ecology is also required to review the environmental projects of other State agencies.

The Environment and Forest Restoration Act establishes a grant program to fund local governments and nonprofit organizations who perform stream restoration work. The vision of this act has been implemented by DNR in the Jobs for the Environment (JFE) program. JFE, along with similar programs in the Interagency Committee for Outdoor Recreation (IAC), Conservation Commission, State Department of Fish and Wildlife (WDFW), and Ecology, has funded or performed both in-stream and riparian restoration projects. These projects have generally followed the specifications of the Natural Resource Conservation Service (NRCS) and have used vegetative treatment systems.

The Forest Practices Act governs the harvest of timber on both State-owned and public lands. Under the federal consistency provisions of the Clean Water Act, the U. S. Forest Service would also be required to manage its harvest in a manner consistent with this act. The act established a Forest Practices Board, whose chair is the Commissioner of Public Lands. The Board is authorized to promulgate rules regarding forest practices in the state. Forest Practices rules affecting water quality are adopted by reference by Ecology. The Forest Practices Act also requires a permit to harvest timber in the state, and requires reforestation of all cut lands within three years of harvest.

As part of the State's efforts to prevent pollution through public education, chapter 70.102 RCW establishes the Hazardous Substances Information Office within Ecology. The office tracks discharges from point and nonpoint sources of pollution. The office also prepares the State's Toxic Release Inventory and manages the Community Right-to-Know Program as described in 42 USC 11023.

The Hazardous Waste Management Act is the State's counterpart to subtitle C of the federal Resource Conservation and Recovery Act (RCRA: 42 USC 6921 et seq). The Hazardous Waste Management Act authorizes Ecology to seek federal delegation for RCRA. The act also authorizes Ecology to promulgate rules regarding the generation, storage, transport and disposal of hazardous waste as well as waste manifesting and tracking. The act requires local governments to set up programs to manage household hazardous waste (HHW), including the collection and disposal of HHW.

The act regarding *Highway-Related Stormwater Control* establishes a planning, coordination and grants program from the State Department of Transportation. The purpose of the act is to identify and prioritize State, county and local roads which need upgrades to their stormwater systems, and to provide funding to construct those upgrades.

Integrated Pest Management is defined in Chapter 17.15 RCW. This law also requires all state agencies which own property to design and implement integrated pest management strategies for their lands.

A plan to manage Marine Plastic Debris was submitted to the Commissioner of Public Lands in 1988. Chapter 79.81 RCW authorizes DNR to coordinate the implementation of the plan. The plan includes educational programs, prevention programs, and beach cleanup activities. Additionally, in the act, DNR is authorized to receive monies and give grants as funding is available.

The Model Toxics Control Act (MTCA) is one of the major environmental laws in the State which was enacted as a result of an initiative by the people. MTCA is the state's counterpart to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly called Superfund. MTCA contains the policy and procedures to undertake and complete hazardous waste cleanups in the State. In addition, MTCA authorizes Ecology to distribute grants to local governments for solid and hazardous waste management and remedial action at contaminated landfills. These grants are currently being distributed through the Coordinated Prevention Grants program at Ecology.

The Oil and Hazardous Substance Spill Prevention and Response Act (OSPRA) combats spills of oil and other hazardous substances into the waters of the State from the merchant and military fleets which travel in Washington's waters. The act authorizes Ecology to promulgate rules on the handling of oil and hazardous substances on marine vessels, to prevent spills as much as possible. The act also authorizes Ecology to assess and collect damages and fines for spills which do occur.

The responsibility to manage *Onsite Sewage Disposal* Systems (OSDS) is delegated to local governments in chapter 70.118 RCW. Local health districts are to issue permits for the construction of OSDS and monitor performance of existing systems. Local governments may also provide technical and financial assistance to landowners to repair and/or upgrade their septic system. Financial assistance comes from sewer rates and the State Revolving Fund. The State Department of Health is responsible to establish design, construction, and operating standards for OSDS. These standards can be found in Chapter 246-272 WAC.

The Pesticide Control Act authorizes the State Department of Agriculture (WSDA) to implement a program that is at least as rigorous as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA: 7 USC 136 et seq). The Pesticide Control Act sets the general procedures for registering a pesticide, and suspending or revoking a pesticide registration. The authority to implement the State's pesticide collection system is also in the act, as well as procedures for the licensing of pesticide dealers and pest consultants. The act authorizes the department to pursue "stop sale" orders on unsafe pesticides and to levy civil penalties for misuse of pesticides.

The Pesticide Applicators Act provides general procedures for the licensing of pesticide applicators. The scope of the act includes commercial and private applicators, and applications for research. To receive their license, applicators must complete educational and testing requirements and pay a fee. Their work is subject to routine inspection by

WSDA. The department is authorized to suspend or revoke licenses for violations of the act, and may pursue civil penalties in the case of illegal applications. In addition, the act also creates a board to advise WSDA in pesticide-related issues.

Chapter 70.95L RCW limits the amount of *Phosphorus in Detergents* in an attempt to control eutrophication in rivers and lakes. The act prohibits the sale or distribution of laundry detergents with more than 0.5 percent phosphorus by weight and dishwashing liquid with more than 8.7 percent phosphorus. This act limits the amount of phosphorus from household sources.

The Public Lands Act governs the sale and lease of state-owned lands. Lands can be sold to support educational institutions. Timber and mineral rights are to be sold separately from the land itself. State land can be leased for crop production, grazing, coal mining, sand and gravel mining, or seaweed gathering. The act also establishes the procedures for the State to acquire unused railroad rights of way. The act requires the establishment of ecosystem standards which must be followed on lands leased for agriculture and grazing.

In 1996, the Puget Sound Water Quality Authority (PSWQA) was discontinued under Washington's Sunset Act (chapter 43.131 RCW). The Puget Sound Water Quality Protection Act, enacted that year, enabled the work of PSWQA to continue through the new Puget Sound Action Team (PSAT) in the Office of the Governor. PSAT is required to oversee the implementation of the Puget Sound Water Quality Management Plan, last updated in 1994. Each biennium, the PSAT prepares a work plan that includes all State agencies implementing the plan for submission to the legislature. In addition, the PSAT is authorized to give grants and educate the public on issues related to the water quality in Puget Sound. The PSAT is also responsible to track implementation of the State's Salmon Recovery Plan within Puget Sound. A discussion of the elements of the Puget Sound Plan as they relate to the implementation of the management measures is found in the previously submitted coastal nonpoint strategy: "Washington's Nonpoint Strategy: CZARA 6217, Revised June 30, 1996."

Chapter 76.12 RCW authorizes DNR to acquire lands for the purpose of *Reforestation*. Lands can then be held in trust as forest lands, or ceded to county governments for use as parks. Acquisitions or land exchanges can also be used to "block up" State forest lands into larger, more compact holdings.

In addition to safety and traffic laws for pleasure boats, the *Regulation of Recreational Vessels* provides funding and authorization to the State Parks and Recreation Commission for educating boaters on methods and techniques for boat maintenance and use which are appropriate for the environment. This act also provides funding and the framework for the grants for marine sewage pumpout stations, including a provision for maintenance of the facilities.

The act regarding *Sales and Leases of Public Lands and Materials*, a supplementary statute to the Public Lands Act, authorizes the lease of land for electronic transmission repeater stations and share-cropping leases for agriculture.

The Salmon Enhancement Act establishes Regional Fisheries Enhancement Groups. These nonprofit organizations identify problems in fish habitat and fish barriers in streams. They also organize projects to rectify the problems, generally using some form of stream or riparian restoration. These groups may receive grant funding from various sources, including a number of State agencies.

The Solid Waste Management -- Reduction and Recycling -- Act governs all aspects of the collection, transportation, storage (if any), and disposal of solid waste in the State. It is the State's counterpart to subtitle D of the federal Resource Conservation and Recovery Act, mentioned above in the discussion of the Hazardous Waste Management Act. The act requires counties to prepare comprehensive solid waste plans, which are then approved by Ecology. Plan approval makes counties and their respective cities eligible for grants under the Local Toxics Control Account. The act also governs the design and operation of solid waste landfills and facilities. In addition, the discard of solid waste into the environment is prohibited. Local health districts and departments are given primary enforcement and permitting authority for solid waste landfills, facilities, and illicit dumping.

The act regarding *Stewardship of Nonindustrial Forests and Woodlands* requires DNR to establish an office to provide technical and financial assistance to small forest landowners in complying with the environmental requirements of the Forest Practices Act.

The Used Oil Recycling Act provides for the collection and disposal of used oil. It prohibits the disposal of used oil and materials containing recoverable used oil except by recycling. The use of oil as a dust suppressant is explicitly prohibited.

The Waste Reduction, Recycling, and Litter Control Act provides for the collection, transportation, and disposal of solid waste that has been illicitly introduced in the environment. Littering is prohibited in all areas of the State. Funds are provided for public education and litter pickup. A broad range of agencies can enforce the anti-litter provisions of the act.

The Water Pollution Control Act (chapter 90.48 RCW) provides broad authority to issue permits and regulations, and prohibits all discharges to water. The act openly declares that it is the policy of the state to maintain the highest possible standards to ensure the purity of all the waters of the state and to require the use of all known, available, and reasonable means to prevent and control water pollution. The act defines waters of the state and pollution and authorizes the Department of Ecology to control and prevent pollution, to make and enforce rules, including water quality standards. The act also designates Ecology as the state water pollution control agency for all the purposes of the federal Clean Water Act. Under this statute, Ecology is authorized to administer

wastewater disposal permits and to require prior approval of plans and proposed methods of operation of sewerage or other disposal systems.

The Worker and Community Right to Know Act was passed in response to federal legislation in Title III of the Superfund Reauthorization and Amendment Act. The specific requirements of the Community Right to Know provisions can be found in 42 USC 11023. The Hazardous Substance Information Office established in chapter 70.102 RCW manages the State's Community Right to Know program. By educating and providing information to the public regarding the proper use and disposal of toxic chemicals, this program acts to prevent nonpoint pollution from these sources.

Polluting Water and Enforcement

As demonstrated by the previous discussion, a myriad of laws governs nonpoint pollution. However, the real challenge lies in the enforcement of these laws. Due to the cumulative nature of nonpoint pollution, it may be traced back to several sources, or even be untraceable. In addition, since nonpoint pollution encompasses so many different types of sources, contributors are spread across the entire landscape, each adding its incremental pollution load.

A permitting and inspection program for so many diverse sources is beyond State resources to manage. Some specific sources, such as dairies, do have inspection programs. All sources are governed by the State's Water Pollution Control Act (chapter 90.48 RCW). This act is a key tool in enforcing against polluters that impact the state's waters. Many or most of these enforcement actions are based on a very broad, general prohibition against discharges into water found in the act:

“It shall be unlawful for any person to throw, drain, run, or otherwise discharge into the waters of this state, or to cause, permit or suffer to be thrown, run, drained or allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter.” (RCW 90.48.080)

Here are the problems with enforcing such a broad prohibition:

- There is no backup federal authority. The federal Clean Water Act limits its enforcement provisions to a “discharge of pollutants” from “any point source.” (33 USC 1322)
- It may be that no one site may cause sufficient pollution to warrant enforcement. The pollution may be cumulative over many sites and sources. Who broke the law? The first to pollute; the one that actually caused violation of the water quality standards, even though that site may have released one of the smaller amounts?

- It is difficult to enforce on a whole community and expect significant change. The paradox of community-wide enforcement is demonstrated by the former 55 mph speed limit. If you enforce widely, you will have one of two results: (1) you will achieve high compliance, or (2) you will have your enforcement powers restricted or the law you are enforcing repealed. In the case of the speed limit, option number two happened.
- It is also difficult to link a single discharge to a particular pollution problem without extensive water quality monitoring, which can be expensive and divert resources from more effective approaches. There is an equity issue: enforcement must prevent any advantage, economic or otherwise, that may result from breaking the law.

The application of the prohibition varies between categories of nonpoint pollution:

Enforcement in *Agriculture* is problematic. This category is the best example of many diverse sources contributing to a given pollution problem. The enforcement action is a reactive approach, occurring after the damage has been done. In addition, some BMPs may be too costly. For example, under the Food Quality Protection Act (FQPA), many pesticides are at risk for removal from the market. While removing them would aid the environment, in many cases, additional time and resources are needed to implement alternate pest management methods.

Enforcement in *Forestry* is based on the Forest Practices Act (FPA: chapter 76.09 RCW). The FPA is a permitting and inspection program administered by DNR. There are specific standards and practices found in Title 222 of the Washington Administrative Code (WAC). A forestry activity that is in compliance with its permit, the Forest Practices Act, and corresponding regulations is considered to be in compliance with the water pollution laws and standards as well.

Focus in *Urban Areas* is on waste management, and is generally the responsibility of local governments under the Waste Reduction, Recycling, and Litter Control Act (chapter 70.93 RCW) and the Solid Waste Management -- Waste Reduction and Recycling -- Act (chapter 70.95 RCW). These waste management acts have three key components for managing nonpoint pollution.

The first of these components is that there is a general prohibition in both acts against the illicit dumping of waste materials:

“ No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

- (a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;
- (b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of said private or public property or waters. (RCW 70.95.060)

Unlike water quality laws, any law enforcement officer can enforce this prohibition, although it is generally local health districts or departments which manage the cleanup of illicit dumping of solid waste:

“In addition, state patrol officers, wildlife agents, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules and regulations adopted thereunder...” (RCW 70.95.050)

If the waste dumped is hazardous, such as a pesticide, Ecology manages the cleanup and enforcement under the Model Toxics Control Act (chapter 70.105D) and the Hazardous Waste Management Act (chapter 70.105 RCW).

Illicit dumping of solid waste is a civil infraction. Penalties include fines of up to \$500 per incident and cost of cleanup. The penalty for the illicit dumping of hazardous waste can be civil or criminal, depending on the specifics of the case. Enforcement can be taken for even minor quantities; there is no lower limit. The limitation on enforcement is that of the resources of the enforcing agency or jurisdiction.

The second component for waste management is the permitting of waste disposal sites. Solid waste disposal sites are permitted by local health districts or departments. In the Solid Waste Act, Ecology is designated to promulgate the standards which all disposal facilities must meet, paying special attention to preventing the dispersion of the collected waste. Ecology may also appeal a solid waste facility permit issued by a health district or department that it considers inadequate.

The third component of Solid Waste Management is the requirement for all counties to prepare a plan to manage all forms of solid waste within their jurisdictions, including cities within the county. The plan must contain a component to manage hazardous waste from household and small businesses. It must be updated regularly and approved by Ecology for counties and cities to receive grants under the Local Toxics Control Account.

Although the waste management laws provide a substantial web of enforceable authorities, the prohibition in RCW 90.48.080 may also be used if any of these materials enters any waters of the State.

Several laws govern the *Hydromodification* and *Recreation* categories: the seven Aquatic Lands Acts, the “Hydraulic Code” (HPA) and the Shoreline Management Act (SMA). These acts work together to manage activities along more than 3,000 miles of State shorelines, from both a landward and a seaward perspective. The HPA and SMA both require permits for activities at the water-land interface. Permits under HPA, issued by the State Department of Fish and Wildlife, place conditions on projects below the high water mark. Permits can be denied or conditioned only to protect fish. Many actions that may threaten fish would also impact water quality and may be limited or prohibited in the HPA permit. Permits under SMA are for projects above the high water mark. SMA permits can be issued by local governments or Ecology. Some types of major projects, such as highway bridge construction, are directly permitted by Ecology.

All waterfront activities must receive one or both of these permits. In addition, if the land will be used for a marina, aquaculture, or other ongoing aquatic activity, the applicant must obtain a lease from DNR. Leases are issued when it is in the best interest for the public good.

As a policy, DNR includes all conditions on the HPA and/or SMA in the terms of the lease. A violation of the permit is also a violation of the lease and can invoke not only enforcement action from the regulatory agencies, but lease revocation and eviction by DNR.

An advantage of the leases is that their conditions can be enforced when the State’s regulations can’t be, such as with a federal agency. Thus, for a violation or polluting activity, DNR can evict, where other agencies cannot act. Each of the permits and the lease must go through the SEPA process where mitigation measures can be required for any action threatening the environment.

Finally, as the last category, wetlands and riparian areas are governed as land uses and thus fall under SEPA, GMA, and SMA. In addition, certain projects in this category also fall under the Hydraulic Code.

But, as mentioned at the beginning of the section, as a complement to the preventive and regulatory laws discussed in this section, if a pollutant actually enters the waters of the State of Washington, the prohibition in the Water Pollution Control Act can be used to penalize those responsible. A summary of the 206 enforcement actions against nonpoint sources during the 1997 - 1998 time period follows to illustrate the use of this law.

Table 3.5
Enforcement Actions on Nonpoint Sources
under the Washington State Water Pollution Control Act
(Chapter 90.48 RCW)
1997 -1998

Category of Source	Notices of Violation	Orders	Penalties
Agriculture	9	33	18
Commercial	5	19	33
Construction	13	1	25
Hydromodification	1	2	2
Municipalities	5	12	5
Roads, Highways & Bridges	8	4	4
Total	41	75	90

(Source: Ecology violation tracking database.)

By comparison, 53 Notices of Violation, 66 Orders and 88 Penalties for a total of 207 actions were taken against point sources during the same period.

Although the general prohibition is the most used aspect of the Water Pollution Control Act, the original framework of the water quality management system in the State has three components similar to those of the solid waste system: a general prohibition (previously discussed), a planning requirement for local governments, and a permitting system for wastewater treatment plants. These activities have not been integrated as completely as for the solid waste system. Permitting of wastewater treatment facilities is, of course, a point source activity, and therefore, out of the scope of this plan.

The Sewer Basin Planning process is established in RCW 90.48.280. The sewer basins established by Ecology correspond to WRIAs. Chapter 372-68 WAC requires these water pollution control and abatement plans to address current and future water pollution control needs including collection systems and treatment facilities. In addition, these plans should include discussion and location of other sources of water pollution including such as municipal, agricultural and industrial wastewaters; stormwater and erosion; on-site sewage; dredging and river impoundments; and wastes from vessels and marinas. Many of these considerations encompass sources of nonpoint pollution. However, the relationship of these plans to more recent mandates is unclear. These requirements could be subrogated to or superceded by the Watershed Planning Act, chapter 90.82 RCW.